

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH Nos. 2018011110
2018020690

DECISION

Theresa M. Brehl, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter in San Bernardino, California, on February 28 and March 1, 2018.¹

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, Inland Regional Center, represented Inland Regional Center (IRC).

Claimant's mother represented claimant.

¹ Claimant's two cases (OAH Case Nos. 2018011110 and 2018020690) and his two siblings' five cases (OAH Case Nos. 2017120922, 2018011111, 2018020689, 2018011109, and 2018020688) were consolidated for a single hearing. There is one decision for each claimant. Therefore, this decision addresses OAH Case Nos. 2018011110 and 2018020690; a second decision addresses OAH Case Nos. 2017120922, 2018011111, and 2018020689; and a third decision addresses OAH Case Nos. 2018011109 and 2018020688.

The matter was submitted on March 9, 2018.²

ISSUES³

1. Should IRC fund diabetes camp for claimant?
2. Should IRC fund claimant's attendance at Marquee Performing Arts Academy?
3. Should IRC fund homemaker services?⁴

² The record was held open until March 9, 2018, to allow the parties to simultaneously submit closing argument briefs. On March 9, 2018, claimant's closing argument brief was marked as Exhibit C-31 for identification, IRC's closing argument brief was marked as Exhibit I-45 for identification, the record was closed, and the case was submitted. Claimant submitted additional evidence after the case was closed, which was not considered.

³ Although claimant submitted a fair hearing request regarding reimbursement for respite services, the respite reimbursement request IRC denied only concerned claimant's sister, who requires Licensed Vocational Nurse (LVN) level respite because she has diabetes. Hence, there were no issues to decide in this claimant's cases regarding respite.

⁴ As is discussed further below, at the time of the hearing, IRC had offered to fund personal attendant services; claimant's mother was still learning about those services and had not yet decided whether to accept them. Although the parties raised the personal attendant services as a possible issue, because IRC did not deny those services, whether IRC should fund personal attendant services was not an issue that was ripe for a fair hearing determination.

FACTUAL FINDINGS

CLAIMANT'S FAIR HEARING REQUESTS⁵

1. Claimant submitted fair hearing requests appealing:
 - IRC's January 9, 2018, denial of claimant's request for homemaker services.
 - IRC's January 23, 2018, denial of claimant's request that IRC fund diabetes camp for claimant.
 - IRC's January 25, 2018, denial of claimant's request that IRC fund claimant's attendance at the Marquee Academy of Performing Arts.
2. Claimant's Fair Hearing Request, dated January 18, 2018, stated the following reason for requesting a hearing:

Including siblings, also IRC consumers, mother estimates that she has 11 denials of services requests over the last 2 months. Requesting a hearing to resolve as many of these issues as possible. See attached list of denials and why family requested each one.

In the attachment, claimant argued that IRC should fund: (1) "Occupational Therapy Request";⁶ (2) "Diabetes Camp"; (3) "Performing Arts Classes at Marquee

⁵ During the instant hearing, claimant's mother argued that IRC refused to meet with her to update claimant's August 11, 2017, Individual Program Plan (IPP). The evidence presented showed that IRC issued IPP addenda on December 29, 2017; January 12, 2018; and January 24, 2018. Claimant's requests to update his IPP were not the subject of a notice of proposed action or a request for fair hearing, and no findings are made in this decision regarding claimant's request to update his IPP.

Performing Arts”; (4) “Request for Household Services”; and (5) “Request for regular respite for all three children.”⁷

The January 18, 2018, Fair Hearing Request stated that the following was needed to resolve the complaint:

1. Securing appropriate respite.
2. Household help for mother who was recently diagnosed with Lupus.
3. Help mother with after school routine: homework, behavior management, self-care.
4. Creative ideas for out of home respite that meet IPP outcomes.

CLAIMANT’S BACKGROUND AND THE SERVICES HE HAS RECEIVED

3. Claimant is a 12-year-old boy, who has been an IRC consumer since 2007, based on a diagnosis of Autism Spectrum Disorder. He is one of three triplets, and the other two triplets, his sister and brother, are also IRC consumers. His brother is an IRC consumer based on a diagnosis of Autism Spectrum Disorder, and his sister is an IRC consumer based on a diagnosis Cerebral Palsy. His sister recently learned that she may be autistic, and IRC has scheduled an evaluation to determine whether she may also be eligible for regional center services based on Autism Spectrum Disorder. During fall

⁶ IRC denied a request for occupational therapy for claimant’s sister that mother had made to obtain parent training from an IRC occupational therapy vendor. During the hearing, claimant’s mother confirmed that she was no longer seeking that service.

⁷ See footnote 3, above, regarding respite services.

2016, claimant's sister learned that she suffers from type 1 diabetes. Claimant also has a nine-year-old sister who is not an IRC consumer. Claimant's father works full time out of the home. His mother does not work outside the home; she stopped working as a teacher to care for claimant and his siblings.

4. Claimant has an Individualized Education Program (IEP) and he receives special education services and supports through his school district, including occupational therapy and speech therapy, based on autism and speech and language impairment. Claimant has been doing well in school academically. During the hearing and in its closing argument brief, IRC focused much of its attention on claimant's and his siblings' school accomplishments and the school's evaluations regarding their abilities, and IRC argued that the triplets may not suffer substantial deficits in their adaptive functioning. Despite IRC's arguments regarding the triplets' abilities and adaptive functioning, the professionals who have interacted with and provided services to the triplets indicated that due to their significant deficits, including deficits in adaptive functioning, they are in need of multiple services.

5. Bailey J. Nelson, OTR/L, the children's occupational therapist since August 2017, wrote a letter dated February 22, 2018. In her letter, she stated that she treats the triplets on a weekly basis and has been working with them to address "various behavioral, emotional, and self-care concerns." She also wrote that "their complex, and various diagnoses represent a complicated and challenging situation." She wrote that it is her "professional opinion that the [claimant's] family requires multiple professionals and service providers to aid in the success and development of the children as fully functional, fulfilled, and happy individuals." She also noted that "[a]ll three have many skills and talents, and are truly incredible children, but they also present with many tricky and demanding needs."

6. Claimant and his siblings received IRC funded Applied Behavior Analysis (ABA) therapy until July 31, 2017, when the ABA provider, Specialized Psychology

Solutions, terminated the services after the provider determined that claimant's needs were beyond what its staff could provide and the triplets would be better treated by a mental health practitioner. Adam Cash, BCBA-D, Psy.D., Specialized Psychology Solutions's Clinical Director, wrote the following in a February 12, 2018, memorandum:

[I]t became apparent that the services we were providing were inadequate at some point. [Claimant] continued to have ongoing issues with severe emotional outbursts, aggressive behavior, threatening behavior, and continued social difficulties. It was our clinical judgment that [claimant] was in need of services beyond what my paraprofessional staff could provide. He began to show signs of a possible comorbid mental health condition (perhaps a mood disorder). . . .

At some point, the children were receiving services from multiple professionals and providers that made coordination of care extremely difficult. [Claimant's sister's] medical issues were severe and were straining the family's (and my staff's) resources to the breaking point. The children and the family as a whole, were in need of significant support just to get by on a daily basis. The children continued to need intervention for Autism-related issues, [claimant] was possibly in need of additional mental health treatment, his sister was in need of daily care for her diabetes, and the family needed ongoing respite-type support and most likely family therapy in order to cope with these extreme stressors. It was clear to our clinical team that we were simply incapable of providing

effective services in such a complex situation and felt that perhaps a more capable program would be more appropriate.

It is my position to this day, that the [claimant's] family's situation represented one of the most complicated clinical cases we have ever come across. I humbly admit that their situation was simply too much for my clinical team to handle. Moreover, I believe their situation is simply too much for any single family to overcome without substantial help and support from outside the family, . . . Although the . . . children all show great potential, their deficits will continue to challenge the knowledge and skill of any intervention program. Yet, I believe that with the proper intervention, support, and resources, they can succeed and thrive.

7. IRC funded claimant's sister's receipt of 60 hours per month of one-on-one Behavioral Respite Specialized Individual Training (SIT) from California Psychcare beginning April 1, 2017, and ending September 18, 2017.⁸ His sister's SIT services were terminated at claimant's mother's request and replaced with routine respite care services. California Psychcare's September 2017 termination report also noted that claimant's sister exhibited the following "Behavior Excesses":

⁸ Although the SIT services were provided to claimant's sister, they are mentioned here to provide a clearer picture of claimant's home environment and the complexity of having three developmentally disabled children with different needs living together with their family.

[Claimant's sister] displays problem behavior such as self injurious behavior which includes hitting face with closed and open hand when presented with non-preferred tasks. [Claimant's sister] engages in tantrum behaviors and verbal protest. Tantrum includes screaming above normal volume accompanied with "No" or "Why [*sic*] I have to do that." Yelling at high pitch tone with no words and crying for over five minutes during tantrum episodes.

8. From October 2016 through July 2017, claimant's sister also received services from Uplift Family Services (formerly EMQ Families First). IRC agreed to provide those services after claimant's sister suffered a mental health crisis that appeared to have been triggered by her diabetes diagnosis. Corey Thompson, M.A., an Uplift associate professional clinical counselor, wrote an undated letter in which he stated the following about those services:⁹

The Uplift Family Services team worked with [claimant's mother] to create a functional schedule that attended to the individual needs of her children, allowed [claimant's mother] to spend quality one-on-one time with each child, and set aside some much needed time for self-care. Scheduling activities proved difficult due to the many needs of each child, as the children craved [claimant's mother's] attention and would often seek her out when she was attending to another child

⁹ These services included helping claimant's mother manage all of her children, including claimant.

From my observation, the family functioned best when the children had structured activities where [claimant's mother] was able to manage schedules for each child to include adequate time for mother's self-care. . . .

Uplift program coordinator Yvonne Sanchez, B.A., echoed the sentiment of Mr. Thompson and added in a letter, dated February 20, 2018, that:

[Claimant's mother] consistently attempted to accommodate the needs of each sibling, but found it difficult to be in many places at once. The team assisted [claimant's mother] in organizing homework help, outdoor play, chores, mindfulness activities, and services in a daily calendar. . . . I observed that [claimant's mother] found it easier to write down the daily schedule on a white board and always included the services to help implement the daily check list. . . .

9. IRC approved 92 hours per month of respite services for claimant and his brother, which they share such that one respite worker is assigned at a time for the two boys. IRC also approved 92 hours per month of one-on-one routine respite and 92 hours per month of one-on-one LVN level respite for claimant's sister, as a result of the emergency medical interventions that could be needed due to her diabetes. The children attend school Monday through Friday from 8:30 a.m. until 3:16 p.m., except that school starts later, at 9:20 a.m., on Thursdays. Claimant's mother has scheduled respite hours from approximately 3:30 p.m. through 8:30 p.m. on weekdays, to cover the time the children come home from school until they go to bed. As a result of claimant's need for LVN level respite and the manner in which the routine respite care is staffed, when

the approved respite hours are fully staffed, there are two routine respite workers and one LVN respite worker in the family's home at the same time.¹⁰ During those after school hours, claimant's mother helps each of her four children with homework, and she has a checklist of activities she developed that she wants the respite workers to follow in order to maintain the children's routines.

10. With three respite workers in the family home at the same time, the workers had conflicts. The LVN worker would only provide nursing level care, and she therefore did not do anything but wait for there to be a need for nursing level care for claimant's sister. That caused the routine respite workers to complain that the LVN worker was not helping. Sometimes, while claimant's mother was helping her children with their homework, the respite workers would be playing with their phones or coloring, and not doing anything to help with the children. Additionally, one of the routine respite workers consistently arrived late. As a result, claimant's mother became frustrated and asked IRC for help managing the workers in her home.¹¹ Despite the problems that arose with the respite workers, claimant's mother hesitated changing respite workers because she was concerned such changes might negatively impact her

¹⁰ IRC's vendors have not been able to staff an LVN respite worker for claimant's sister since December 15, 2017.

¹¹ IRC scheduled a meeting with claimant's mother for January 11, 2018, but after IRC Consumer Services Coordinator (CSC) Elizabeth Velazquez sent an email to claimant's mother with what appeared to be a mocking emoji, claimant's mother cancelled that meeting and said she wanted to go before the hearing officer. CSC Velazquez explained during the hearing that she accidentally used that emoji and she accidentally sent an internal email with that emoji to claimant's mother. She apologized to claimant's mother.

children who need consistent routines due to their disabilities. During the hearing, IRC seemed to focus a lot of attention on what might be a “usual” way for families to use respite hours.¹² But, based on the letters written by the ABA, SIT, Uplift, occupational therapy, and psychological professionals, there is nothing “usual” about the challenges faced by this family.

11. The triplets also receive mental health care, funded through insurance. Maria Elena Moya, M.D., a child and adolescent psychiatrist, treats claimant and her brothers. Rachel Taylor, a licensed marriage and family therapist and registered play therapist supervisor, has also been providing therapy to claimant and her siblings on Saturdays since May 2017. Dr. Moya wrote a letter, dated May 13, 2016, in support of claimant’s family’s need for adequate respite services. Ms. Taylor wrote an undated letter that outlined her opinions regarding the extraordinary nature of the family’s situation as follows:

¹² IRC presented its employees’ opinion testimony concerning when parents “usually” used respite hours, why most parents “usually” used respite, and what the respite workers “usually” did. IRC program manager Leigh-Ann Pierce referred to respite as “just like babysitting” where a respite worker would “watch a movie with” the consumer and maybe give the consumer a snack or meal that had already been prepared in advance by the consumer’s parents. She also stated that consumer’s parents “usually” left their home when respite workers were present. IRC employees also testified that claimant’s mother should not be “delegating” to the respite workers, although they stated that she could give them “instructions.” There was no foundational basis for those opinions and they were not consistent with the other evidence presented or with the definitions of “respite” contained in the Welfare and Institutions Code and the California Code of Regulations.

I have formed a professional opinion that there is more than one extraordinary circumstance that makes this family's situation unique. I thought it best to list them:

1. There are pre-adolescent triplets in the home. Each developmental stage is magnified at this time.
2. The triplets each have a developmental disability, and one of them also has cerebral palsy and type I diabetes.
3. The triplets can all become aggressive to themselves and/or each other at any given moment, sometimes without any provocation.
4. There is a typically developing child in the home who has three special needs siblings and is unable to get the parental attention she needs due to her siblings' severe and constant needs.
5. [Claimant's mother] is battling an autoimmune disorder that leaves her exhausted and unable to perform daily tasks on occasion.

[¶] . . . [¶]

When [claimant's parents] request supports and services for their children, I believe that their requests are urgent, critically important, and should be given careful consideration as a means to keep the family intact. Furthermore, I believe that there are extraordinary

circumstances that should always be a frame of reference in which their family's needs should be carefully determined.

12. Claimant's mother has been working to arrange ABA therapy through a different provider through her family's current medical insurance. Claimant's mother has also been considering personal attendant services that were recently offered by IRC.¹³

HOMEMAKER SERVICES

13. Claimant's mother asked IRC to fund homemaker services because she was recently diagnosed with lupus, which causes her to be fatigued, and she has struggled with keeping up with household duties as a result of having three developmentally disabled children in the home. Claimant's mother's doctor, V. Douglas Jodoin, M.D., wrote a letter stating that claimant's mother suffers from systemic lupus, autoimmune thyroiditis, chronic post-traumatic stress, and chronic migraines. Due to her medical condition, and the extra care and attention she needs to give to her triplets, Dr. Jodoin stated that "it is difficult for [claimant's mother] to attend to all the daily tasks of managing a household."

14. Claimant receives 18 hours per month of In Home Supportive Services (IHSS), funded through the county, and claimant's mother is paid for providing those services. Claimant's mother requested additional IHSS hours to pay for housekeeping services. That request was denied. She has not appealed that denial.

15. In IRC's January 9, 2018, letter denying homemaker services, it stated that "housekeeping/household maintenance is not a service that can be funded by the regional center for minor children who live with their parents. This is a responsibility of all parents of minor children"; "maintaining the household benefits the entire family; this

¹³ The proposed personal attendant services are discussed further under the heading "Homemaker Services."

is not something exclusively for [claimant]”; “the regional center may fund in-home personal care assistance or homemaker services, including tasks to help maintain the home environment, for adult consumers who live independently”; and “funding homemaker services/household maintenance services to help you maintain an orderly home for you and your family is not a specialized service or support directed toward alleviation of [claimant’s] developmental disability; nor is it a service directed toward the social, personal, physical, or economic habilitation or rehabilitation of [claimant].”¹⁴

16. In an addendum to claimant’s IPP, dated January 24, 2018, the following language was added at claimant’s mother’s request:

The parents would like to include that the mother’s doctor, and the mental health provider for [claimant] believe that homemaker services would support the family in achieving and maintaining the least restrictive environment of a clean and orderly home. The extraordinary level of care required to raise disabled triplets, as well as the mother’s health are major obstacles to providing what would typically be a parent’s responsibility for a minor child without disabilities.

17. As an alternative to providing homemaker services, IRC offered to provide claimant personal attendant services that would include goals to assist claimant to learn to perform housekeeping tasks and prepare meals.¹⁵ On February 12, 2018, Maxim

¹⁴ As is discussed in the Legal Conclusions, IRC’s reasoning is contrary to the law set forth in Welfare and Institutions Code sections 4512, subdivision (b), and 4685.

¹⁵ IRC has taken the position that when a personal attendant helps claimant learn to prepare a meal, claimant may not prepare a meal for the entire family, because the service must exclusively benefit the claimant and preparing a family meal would also

Healthcare Services (Maxim) performed a personal attendant evaluation and proposed to provide a one-on-one personal attendant to help claimant become more independent in private and public settings and function independently with daily activities. In the proposal, Maxim listed the following as claimant's objectives and goals: initiate homework, prepare meals, clean dishes and pick up after himself, and attend to his own personal care, including showering/bathing, dressing, toileting, and brushing teeth.

Claimant and his family have not decided whether to pursue the personal attendant services which IRC offered to fund shortly before the hearing. Claimant's mother raised concerns regarding having so many adults in her home at the same time and was worried about how she would coordinate other services, including ABA therapy and respite, during the limited time when claimant and his siblings were not in school or engaged in other activities.¹⁶

MARQUEE ACADEMY OF PERFORMING ARTS

18. Marquee Academy of Performing Arts (Marquee) is a non-profit music school. Its mission is "to provide an educational environment that fosters artistic growth of its students, resourcing the support and involvement of local, regional and national artists and patrons of the arts." (As stated in excerpts from Marquee's website received in evidence.)

benefit the family. That rigid position is at odds with the language of Welfare and Institutions Code section 4685, as is discussed further in the Legal Conclusions portion of this decision.

¹⁶ It was clear during the hearing that IRC and claimant's mother need to figure out a better way to communicate with each other in order to work toward flexibly coordinating services to best serve claimant's, his siblings', and the family's needs.

19. Claimant has been attending Marquee music classes after school one day a week and on Saturdays. His participation in Marquee's programs allows him to interact and socialize with typical peers. Marquee's executive director wrote a letter, dated February 15, 2018, which stated:

[Claimant and his siblings] spend on-average 7 hours per week at Marquee, (3 hours on Wednesday and 4 hours on Saturday). During that time, the parents take turns being at Marquee in the waiting room while the other is out taking personal time. Sometimes in the waiting room, Dad works on his computer and when Mom is there, she is working or talking with other parents. Often the parent in the waiting room is doing homework with a child that isn't in a class; constantly interacting to [sic] the emotional needs of the children and monitoring [claimant's sister's] intense medical needs.

DIABETES CAMP

20. On November 29, 2017, claimant's mother submitted a request to IRC to fund claimant's sister and her family's attendance at a family session at a diabetes camp. According to excerpts from the Camp Conrad Chinnock website supplied by the parties, the diabetes camp "offers recreation, social, and educational opportunities for youth and families with diabetes. Campers are taught diabetes self-management skills in a fun, interactive, and safe environment." Claimant's mother argued that the diabetes camp should be funded because of the extraordinary nature of the camp, it would provide respite to the parents while the children were engaged in activities at the camp, it would help claimant's sister and her family deal with the emotional toll diabetes has on the entire family, and it would provide claimant's sister an opportunity to socialize with

other children who have diabetes. After IRC denied the request, claimant's entire family attended the winter weekend family session at the diabetes camp.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The burden of proof is on the claimant to establish IRC is required to fund the requested services. (Evid. Code, § 115.) The standard is a preponderance of the evidence. (Evid. Code, § 500.)

2. "Preponderance of the evidence means evidence that has more convincing force than that opposed to it." [Citations.] (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid*, italics emphasis in original.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

STATUTORY AUTHORITY REGARDING THE STATE'S RESPONSIBILITIES TO PERSONS WITH DEVELOPMENTAL DISABILITIES

3. The Lanterman Development Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., governs the state's responsibilities to persons with developmental disabilities.

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4. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them

which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance.

The complexities of providing services and supports to persons with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports. A consumer of services and supports, and where appropriate, his or her parents, legal guardian, or conservator, shall have a leadership role in service design.

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities. . . .

5. Welfare and Institutions Code section 4502.1 states:

The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decision-making skills in any aspect of day-to-day living and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice.

6. "Services and supports for persons with developmental disabilities" are defined by Welfare and Institutions Code section 4512, subdivision (b), and include: "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . homemaker services, . . . [and] respite, . . ."

IN-HOME SERVICES FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES,
INCLUDING SERVICES TO MEET THE FAMILY'S NEEDS AND HOMEMAKER SERVICES

7. Welfare and Institutions Code section 4685 addresses in-home services for children with developmental disabilities as follows:

(a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan.

(b) It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following:

(1) Respect and support the decision-making authority of the family.

(2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.

(3) Recognize and build on family strengths, natural supports, and existing community resources.

(4) Be designed to meet the cultural preferences, values, and lifestyles of families.

(5) Focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community.

(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to, . . . respite for parents, homemaker services, camping, day care, short-term out-of-home care, child care, counseling, mental health services, behavior modification programs, . . . and other benefits to which they are entitled.

(2) When children with developmental disabilities live with their families, the individual program plan shall include a family plan component which describes those services and supports necessary to successfully maintain the child at home. Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives. When the regional center first becomes aware that a family may consider an out-of-home placement, or is in need of

additional specialized services to assist in caring for the child in the home, the regional center shall meet with the family to discuss the situation and the family's current needs, solicit from the family what supports would be necessary to maintain the child in the home, and utilize creative and innovative ways of meeting the family's needs and providing adequate supports to keep the family together, if possible. . . .

8. California Code of Regulations, title 17, section 54342, lists the service codes for various regional center services. Subdivisions (a)(33) and (a)(34) describe "homemaker" services, but they do not place any limitations on the age of the recipients of such services.

(33) Homemaker - Service Code 858. A regional center shall classify a vendor as a homemaker if the vendor maintains, strengthens, or safeguards the care of individuals in their homes.

(34) Homemaker Service - Service Code 860. A regional center shall classify a vendor as a homemaker service if the vendor employs, trains, and assigns personnel who maintain, strengthen, or safeguard the care of individuals in their homes.

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USE OF GENERIC AND OTHER RESOURCES AND CONSIDERATION OF FAMILY'S RESPONSIBILITY TO PROVIDE SERVICES

9. According to Welfare and Institutions Code section 4646.4:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers

shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. . . .

10. Pursuant to Welfare and Institutions Code section 4648, subdivision (a)(1) and (2):

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

11. Regional centers "shall identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659, subd. (a).) Regional centers "shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, The Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or family meets the criteria of such coverage but chooses not to pursue that coverage." (Welf. & Inst. Code, § 4659, subd. (c).)

12. Welfare and Institutions Code section 4648, subdivision (a)(8), states that "[r]egional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

13. Pursuant to Education Code section 56345.2, subdivision (a), school districts have a legal responsibility to provide "supplementary aids and services determined appropriate and necessary by the individualized education program team of the individual with exceptional needs, to provide nonacademic and extracurricular services and activities in the manner necessary to afford individuals with exceptional needs an equal opportunity for participation in those services and activities." The nonacademic and extracurricular services and activities "may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to

individuals with exceptional needs, and employment of pupils, including both employment by the public agency and assistance in making outside employment available." (Ed. Code, § 56345.2, subd. (b).)

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LIMITATIONS REGARDING THE TYPES OF SERVICES THAT IRC MAY FUND

14. Welfare and Institutions Code section 4648.5 provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional center's authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.

(3) Educational services for children three to 17, inclusive, years of age.

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

[¶] . . . [¶]

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

APPLICABLE CASE LAW

15. In *Williams v. Macomber* (1990) 226 Cal.App.3d 225 (as modified on January 4, 1991), the Second District Court of Appeal considered a regional center's denial of home care services based on that regional center's strict compliance with its purchase of services policies and held that services were improperly denied without taking into consideration all the relevant circumstances. (*Id.* at pp. 271-272.) The appellate court explained that "application of an inflexible policy denying such services is contrary to the Act. Whether appellant is entitled to day-care services depends upon a consideration of all relevant circumstances." (*Id.* at p. 272.)

EVALUATION

16. The Lanterman Act requires IRC to "give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home." (Welf. & Inst. Code, 4685, subd. (c)(1).) When providing services to developmentally disabled children living with their families, such as claimant, regional centers must provide services that do all of the following: "Respect and support the decision-making authority of the family"; are "flexible and creative in

meeting the unique and individual needs of families as they evolve over time”; “[r]ecognize and build on family strengths, natural supports, and existing community resources”; are “designed to meet the cultural preferences, values, and lifestyles of families”; and “[f]ocus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community.” (Welf. & Inst. Code, 4685, subd. (b)(1), (2), (3), (4), and (5).) IRC’s argument that it may not provide a service unless it “exclusively” benefits the consumer is not consistent with the law. The Lanterman Act, and section 4685 in particular, does not require IRC to deny services if some incidental benefit may be provided to a consumer’s family. Instead, section 4685 requires IRC to focus on supporting and assisting a developmentally disabled child’s family so the child may remain with his family.

17. Claimant’s parents have worked hard to support claimant’s special needs and the needs of his siblings in a unique situation involving developmentally disabled triplets. It is important that IRC and claimant’s family work together to find and coordinate flexible solutions to assist claimant and his family in a manner that does not overwhelm the family with too many additional adults in the home at the same time. While IRC’s offer to fund personal attendant services appears to be a step in the right direction, IRC should keep in mind that the Lanterman Act commands that regional centers provide services to assist the family of a developmentally disabled child, so the child may continue to live with his family.

18. However, the Lanterman Act specifies limitations regarding certain services a regional center may fund. Several of the services claimant requested may not be funded by IRC, even though the requested services could help claimant achieve the objectives outlined in his IPP.

Diabetes Camp

19. Under Welfare and Institutions Code section 4648.5, subdivision (a)(1), IRC may not fund claimant's attendance at diabetes camp. Claimant failed to prove by a preponderance of the evidence that the exception provided in subdivision (c) of section 4648.5 applies. Diabetes camp is not a "primary or critical means for ameliorating the physical, cognitive, or psychosocial effects" of claimant's disability of autism, and diabetes camp is not "necessary to enable the consumer to remain in his or her home." While claimant's sister suffers from diabetes, claimant does not. Additionally, diabetes camp is something that a family of a minor child without disabilities would be responsible for providing. (See Welf. & Inst. Code, § 4646.4, subd. (a)(4).) Therefore, IRC shall not be ordered to pay for claimant's attendance at diabetes camp.

Marquee Performing Arts Academy

20. Similarly, IRC may not fund claimant's attendance at the Marquee Performing Arts Academy under Welfare and Institutions Code section 4648.5, subdivision (a)(2), (3), and (4), because IRC may not fund "[s]ocial recreation activities, except for those activities vendored as community-based day programs" (subdivision (a)(2)); "[e]ducational services for children three to 17" (subdivision (a)(3)); or "[n]onmedical therapies, including, but not limited to, specialized recreation, art, dance, and music" (subdivision (a)(4)). Claimant failed to prove by a preponderance of the evidence that the exception provided in subdivision (c) of section 4648.5 applies. The Marquee classes are not a "primary or critical means for ameliorating the physical, cognitive, or psychosocial effects" of claimant's disability of autism, and the Marquee classes are not "necessary to enable the consumer to remain in his or her home." Rather the classes claimant takes at Marquee are something that a family of a minor child without disabilities would be responsible for providing. (See Welf. & Inst. Code, § 4646.4,

subd. (a)(4).) Therefore, IRC shall not be ordered to pay for claimant's music classes at Marquee.

Homemaker Services

21. IRC's positions, that homemaker services may not be provided for a developmentally disabled child living with his family or that such services may not be provided because they do not exclusively benefit the consumer, are belied by the explicit language of Welfare and Institutions Code section 4685. That section states that homemaker services may be provided for a consumer who is a developmentally disabled child living with his family. Homemaker services are listed in section 4685, subdivision (c)(1), as a means to "assist families that are caring for their children at home" with the goal of keeping the developmentally disabled child living at home with his family. Homemaker services to assure a clean and organized home environment clearly benefit a developmentally disabled child living with his family. Further, similar to respite, providing homemaker services helps alleviate the stress of caring for a developmentally disabled child, which is also beneficial to the child.

In the present case, where claimant's parents are caring for four children, three of whom are developmentally disabled, providing homemaker services would likely be more beneficial than having three respite workers playing with their phones and/or coloring while claimant's mother struggles to help her four children do their homework. While the personal attendant services may be helpful in teaching the children how to pick up after themselves and help with household chores, 12-year-old children with homework and deficits to deal with cannot be expected to handle all the household duties. While a parent of a non-disabled child would be responsible for household duties, this is an extraordinary situation, involving three developmentally disabled children, all the same age, in the same household, with a fourth younger sibling, a stay at home mother who suffers from debilitating medical conditions, and a father who

works full time. Under these circumstances, IRC should fund homemaker services to help claimant's parents keep a clean and orderly home.¹⁷

ORDER

1. Claimant's appeal from IRC's determination that it will not fund claimant's attendance at diabetes camp is denied. IRC shall not be required to fund diabetes camp.

2. Claimant's appeal from IRC's determination that it will not fund claimant's attendance at the Marquee Performing Arts Academy is denied. IRC shall not be required to fund claimant's classes at the Marquee Performing Arts Academy.

3. Claimant's appeal from IRC's determination that it will not fund homemaker services is granted. IRC's decision not to fund that service is reversed. IRC shall fund homemaker services. This order does not preclude claimant from also receiving the personal attendant services offered by IRC, should claimant choose to accept those services.

DATED: March 22, 2018

THERESA M. BREHL

Administrative Law Judge

Office of Administrative Hearings

¹⁷ Claimant's mother already sought additional IHSS hours to pay for homemaker services, and her request was denied. Therefore, Welfare and Institutions Code section 4659, subdivision (c), does not preclude IRC from funding homemaker services. The requirement that a consumer appeal a denial of services before IRC may fund as the payer of last resort only refers to insurance denials of medical or dental services. (See Welf. & Inst. Code, § 4659, subd. (d).)

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.